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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. ~~1437~~ 205

CHARLES EDWARD ROSS,
Petitioner,

-v-

VIRGINIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA.

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia entered in the above-entitled case on March 7, 1967.

OPINIONS BELOW

Neither the Circuit Court of Louisa County, Virginia, nor the Supreme Court of Appeals of Virginia wrote an opinion in this case.

JURISDICTION

The judgment of the Supreme Court of Appeals of Virginia was entered on March 7, 1967, and is printed in Appendix A, hereto, p. 9, infra. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1257(3).

QUESTIONS PRESENTED

FIRST: Whether petitioner's rights under the due process clause of the Fourteenth Amendment to the Constitution of the United States was infringed by his conviction and sentence on a charge of murder by the nisi prius court under the evidence and the failure of said court to strike the prosecution's evidence and dismiss the charge against him.

SECOND: Whether petitioner's rights under the privilege against self-incrimination and the right to be adequately warned prior to questioning that he had a right to remain silent and that any statement he made might be used against him and that he had the right to the presence of an attorney, either retained or appointed; and whether or not there was a clear, intelligent waiver of these rights so as to make them binding against him under the provisions of the Fifth and Sixth Amendments to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

1. This case involves Section One of the Fourteenth Amendment to the Constitution of the United States which provides that . . . ;

"nor shall any State deprive any person of life, liberty, or property, without due process of law;"

2. This case involves that Section of the Fifth Amendment to the Constitution of the United States which provides that . . . ;

"nor shall (any person) be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, property without due process of law;"

3. This case involves that Section of the Sixth Amendment to the Constitution of the United States which provides that . . . ;

"and to have the assistance of counsel for his defense."

STATEMENT

Petitioner, Charles Edward Ross, a resident of Louisa County, Virginia, seeks review of his conviction of the crime of murder. Petitioner was charged of murder and convicted by a jury on July 19, 1966, in the Circuit Court of Louisa County, Virginia. Motion to set the verdict aside as contrary to the law and evidence was denied and he was sentenced to eighteen years. The petitioner noted an exception.

On March 7, 1967, the Supreme Court of Appeals of Virginia refused to grant a writ of error on the ground that the judgment was "plainly right" (Appendix B, p. 10, infra). The Chief Justice of the Supreme Court of Appeals of Virginia stayed execution of the judgment until June

5, 1967, "in order that he may have reasonable time and opportunity to present to the Supreme Court of the United States a petition for a writ of certiorari to review the judgment of (said) court," (Appendix B, p. 10, infra).

Petitioner timely filed a notice of appeal to the Supreme Court of Appeals of Virginia in which he asserted in his assignments of error that (1) The Court erred in permitting the admission of the petitioner in evidence, which was made to the County Sheriff in the absence of counsel, to go to the jury. The petitioner was not capable of understanding his constitutional rights to be represented by counsel before making any statements whatsoever regarding the charge for which he was being held. (2) The Court erred in denying the petitioner's motion to strike the evidence and dismiss the accused. (3) The Federal . . . constitutional rights of the petitioner were violated when he was subjected to a polygraph test without the advice and presence of counsel. (4) The evidence against the petitioner was insufficient in law to warrant or sustain a verdict of guilt against him and the judgment thereon. (5) The petitioner was denied due process of law in violation of his constitutional rights under . . . the Federal . . . constitution. Thereafter, petitioner filed a petition for a writ of error (a certified copy of which is being filed with record in this case) in which petitioner argued that his conviction was a violation of his rights under the due process clause of the Fourteenth Amendment; the right against self-incrimination clause of the Fifth Amendment; and, the right to have the assistance of counsel for his defense under the Sixth Amendment. The State of Virginia filed a brief in opposition to the petition for writ

of error in which the State argued that there was no merit in petitioner's assigned errors, relying in part upon decisions of the United States Supreme Court in *Escobedo* v. *Illinois,* 378 U. S. 478, and *Miranda* v. *Arizona,* Vol. 86 Sup. Ct. Rep. No. 17, p. 1602 (July 1, 1966).

The evidence presented in petitioner's trial in the Circuit Court of Louisa County, Virginia, is taken from the pertinent parts of the transcript of tesimony designated in certified Notice of Intention to Further Appeal filed herewith.

REASONS FOR GRANTING THE WRIT

The decisions in Virginia are to the effect that where a verdict is not supported by the evidence it should be set aside and a new trial granted, on motion.

Grayson v. *Com.,* 6 Gratt., 712 (1849)

Pryor v. *Com.,* 27 Gratt, 1009 (1876)

In *Dean* v. *Com.,* 32 Gratt., 916, the court held that a new trial will be granted,

1. Where the verdict is against the law. This occurs when the issue involves both law and fact, and the verdict is against the law of the case on the facts proved.

2. Where the verdict is contrary to the evidence. This occurs where the issue involves matter of fact only, and the facts proved required a different verdict from that found by the jury.

See, *The Criminal Trial in the Virginias,* Lee Vol. 1 Sec. 202, page 126 (2nd Ed., 1940).

Thus the petitioner was denied due process of law granted under the Fourteenth Amendment when the court refused to grant his motion to set the jury verdict aside because it was incumbent upon the court so to do when the State's evidence clearly showed that the victim first pursued petitioner and attacked him and said petitioner was acting in self-defense when the act for which he was charged was committed.

Also, it is submitted that the rights of the petitioner were violated pursuant to the Fifth Amendment when the petitioner was questioned by the arresting officer while in custody and in the absence of an attorney and he made a confession not being fully and clearly advised of his right to remain silent and not incriminate himself, not fully understanding nor being capable of understanding his right in this regard and thereby unintelligently waiving said right to remain silent in the absence of having a retained or court-appointed attorney.

And it is further submitted that the rights of the petitioner were violated pursuant to the Sixth Amendment being subjected to custodial interrogation in the absence of a clear, intelligent waiver of the constitutional right involved, as spelled out in *Escobedo* v. *Illinois,* 378 U.S. 478, and *Miranda* v. *Arizona,* 384 U. S. 436 (June 13, 1966).

The conviction also denies due process in violation of the Fourteenth Amendment in that it was based upon no evidence of guilt. The evidence is clear that petitioner

merely acted in self-defense. To punish such conduct would be to punish for innocent act without evidence of guilt or wrongdoing in violation of due process clauses of the Fourteenth and Fifth Amendments.

CONCLUSION

Wherefore, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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